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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,885	08/21/2003	Paul Roland Bergquist	J6819(C)	8190

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EXAMINER	
TORRES VELAZQUEZ, NORCA LIZ	
ART UNIT	**PAPER NUMBER**
1771	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/645,885	BERGQUIST ET AL.	
	Examiner	Art Unit	
	Norca L. Torres-Velazquez	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) *6* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *51004 062804*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-5 and 7-12, drawn to a nonwoven material, classified in class 442, subclass 408.

II. Claim 6, drawn to a process of making, classified in class 28, subclass 103.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by hydroentangling three preformed layers of fibers.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Milton Honig on June 6, 2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1-5 and 7-12. Affirmation of this election must be made by applicant in replying to this Office action. Claim 6 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. It is noted that claims 7-12 were originally restricted over the phone and have been rejoined herein with claims 1-5.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claims 8-10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 8-10 depend on claim 4, it is noted that claim 4 is not directed to a personal cleansing composition. For examining purposes, the Examiner assumes that this is a typographical error and these claims depend on independent claim 7 instead. **Appropriate correction is required**.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by SUSKIND et al. (US 4,808,467) which is an equivalent to EP 0308320 A.

SUSKIND et al. discloses a fabric produced by hydroentangling a web with a basis weight of 0.3 ounce per square yard of continuous nylon filaments between two 0.9 oz/sq. yd.

wet laid webs of pulp and polyethylene terephthalate. (Refer to Example 4, Column 7, lines 14-35). It is noted that the reference teaches using the material as absorbent materials. (Col. 1, lines 48-68)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. (US 4,808,467).

While Example 4 of the SUSKIND et al. reference shows a Frazier Air Permeability of 148 CFM/sq.ft (Table III), it is noted that Air Permeability can be manipulated by one having ordinary skill in the art of hydroentangled fabrics as it is evidenced by the same reference when one compares the hydroentangling conditions between example 4 and 5. Example 4 uses a support woven transfer belt with a lower air permeability to the one used in Example 5. The fabric produced in Example 4 has a nonapertured appearance as a result of the tightly woven transfer belt material versus the apertured fabric of Example 5, which uses a higher permeability transfer belt.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples)

11. Claims 7-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. as applied above, and further in view of WAGNER et al. (US 5,951,991).

While SUSKIND et al. discloses the structure of the nonwoven hydroentangled textile, it fails to teach the use of a cleansing composition comprising a lathering surfactant as claimed herein.

WAGNER et al. relates to a substantially dry, disposable, personal cleansing product. The reference teaches the use of apertured hydroentangled substrates. (Refer to Col. 7, lines 33-col. 8, lines 17) The reference teaches the use of from about 0.5% to about 40% lathering surfactant based on the weight of the substrate. (Col. 8, lines 45-49) The reference further teaches the use of a conditioning emulsion comprising from about 0.25% to about 1505 of the substrate. (Col. 14, lines 2-24)

Since both references are directed to high strength hydroentangled materials, the purpose disclosed by WAGNER et al. would have been recognized in the pertinent art of SUSKIND et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the substrate of SUSKIND et al. and provide with a cleansing composition with lathering surfactant with the motivation of producing a personal cleansing product as disclosed by WAGNER. (Col. 1, lines 15-39)

12. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and WAGNER as applied to claim 7 above, and further in view of BERGQUIST (US 6,723,330 B2).

While WAGNER teaches a substantially dry, disposable, personal cleansing product, if fails to teach the use of effervescent ingredients that would produce foam upon contact with water.

BERGQUIST teaches an article for cleansing body surfaces that includes an effervescent cleansing composition capable of generating a foam upon contact with water. (Abstract) The reference teaches the use of sodium bicarbonate and citric acid. (Col. 2, lines 37-39)

Since this reference is also directed to a substantially dry cleansing composition, the purpose disclosed by BERGQUIST would have been recognized in the pertinent art of WAGNER.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cleansing composition and provide it with the effervescent composition with the motivation of generating a foam upon contact with water without the need to mechanical treat the material to produce the foam.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

SKOOG et al. (US 6,550,115 B1) – teaches a fabric with first and second zones (20, 40) with basis weight between 12-50 gsm and an intermediate third zone (60) with basis weight of 28-165 gsm. The layers are hydroentangled.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

June 7, 2005